

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT
JODHPUR.**

J U D G M E N T

DUNGAR SINGH Vs. BALWANT SINGH

S.B. CIVIL MISC. APPEAL NO. 180 OF 1989

against the order and judgment dated
6.5.1989 passed by the learned District Judge
Udaipur in Case No. (31)42/83.

DATE OF JUDGMENT :: 1st JUNE, 2006.

PRESENT

HON'BLE MR. JUSTICE MANAK MOHTA

Mr. L.R. Mehta]
Mr. M.R. Mehta,] for the appellant.

Mr. B.K. Bhatnagar, for the respondent.

BY THE COURT :

This appeal under Section 39(1)(6) of the Arbitration Act, 1940 (for short "the Act of 1940") is directed against the order and judgment dated 6.5.89 passed by the learned District Judge, Udaipur in Civil Case No.(31)42/83,

by which, the prayer for making the award as rule of the court was rejected.

It reveals from the record that both the parties i.e. Dungar Singh and Balwant Singh are real brothers and sons of Jeet Mal Jain. They had agreed to settle their dispute with regard to partition of the property through Arbitration proceedings. For that purpose, they vide their agreement dated 23.11.81 (Ex.7) had agreed and appointed Shri Fateh Lal, Kiran Mal and Sensh Mal as Arbitrators for settling their disputes partitioning the movable and immovable properties, the Arbitrators were also close relatives of the concerned parties. The Arbitrators after taking due care and considering the material submitted by the concerned parties, unanimously settled their dispute vide Award dated 23.11.81 (Ex.P/8) and that was intimated to the parties and copy whereof was sent on 20.3.1982 to the parties concerned. After completion of other formalities, that award was got registered with the Collector(Stamps), Udaipur. The Arbitrator Shri Sensh Mal moved an application on 7.4.83

before the learned District Judge, Udaipur with a prayer that the impugned Award may be made rule of the court. On receiving this application along with agreement of appointment of the Arbitrators Ex.7 and original Award Ex.8 passed by the Arbitrators, the learned District Judge issued notices to the concerned parties.

One of the parties Balwant Singh filed objections under Sec.30 of the Arbitration Act, 1940 on 9.9.83 through his counsel Shri Ram Chandra Gupta. He submitted a preliminary objection to the effect that the matter should have been registered as Civil Original Suit but instead the Court has registered the matter as Miscellaneous Application. He also raised objection regarding merits and stated that the Arbitrators have not filed record of the proceedings, documents and statements of the witnesses. He further stated that the Arbitrators have given the Award on the very same day in haste, therefore, they have committed misconduct. He also alleged that the Arbitrators did not allow him to participate in the proceedings. The Arbitrators have partitioned his personal property and left

out the ancestral property from partition. He further stated that the Award has been forged by the Arbitrators and it was a forged document and could not be made rule of the court.

The appellant Dungar Singh filed his reply and denied all the allegations made by the respondent in his aforesaid objections. It is submitted that the Arbitrators have not committed any illegality or material irregularity or fraud in making the award and the award should be made the rule of the court. In reply, the appellant also stated that the Arbitrators have passed the award after affording an opportunity of hearing to the parties, therefore, there was no prohibition on the part of them in passing the award on the same day. The Arbitrators have not committed any misconduct in the proceedings, the objections are not maintainable. He prayed that the objections were raised by the respondent Balwant singh after inordinate delay which is barred by time, therefore, the same deserve to be set aside and the Award may be made as Rule of the Court.

During the course of proceedings, the Arbitrators submitted the relevant material on the basis of that, award has been passed. The proceedings were registered as Civil Misc. Case No.(31) 42/83 before the court of District Judge, Udaipur. The learned District Judge, on the basis of the material, framed the following issues for the disposal of the case :-

“1- क्या मध्यस्थगुप ने आपत्ति पत्र में अंकित अवचार (मिस-कन्डक्ट) किया हैं जिसके परिणामस्वरूप पंचाट अपास्त किये जाने योग्य हैं।

2- अनुतोष।”

During trial, the statements of Objector-NAW 1 Balwant Singh was recorded and from the side of the appellant, AW 1 Dungar Singh, and AW 2 Fateh Lal Hingar were recorded and documents were exhibited from Ex.1 to Ex.14.

After hearing the parties, the learned court-below came to the conclusion that the allegations levelled

by the objector Balwant Singh do not constitute any ground of misconduct on the part of the Arbitrators and the Arbitration proceedings, thus, held that the allegations levelled by the objector are not acceptable but the learned District Judge, in view of the findings of the Arbitrators, held that the Award has been passed in a hasty manner. The Award is not clear and not free from other ambiguities. The learned Judge did not find it proper to make the award as rule of the court. Thus, vide judgment and order dated 6.5.89 rejected the prayer making the award dated 23.11.89 as rule of the court.

Being aggrieved by the judgment and order dated 6.5.1989, one of the parties to the Arbitration proceedings, Dungar Singh has filed an appeal before this Court.

I have heard the learned counsel for the parties and carefully perused the record of the case.

During the course of arguments, the learned

counsel appearing for the appellant Dungar Singh submitted that the judgment and order of the learned court-below is against the law and not sustainable. It was contended that the Arbitrators were appointed by the mutual consent of the parties and that has not been disputed. The Arbitrators were close relatives of the parties. On the other hand, the Arbitrator Shri Kiran Mal was the brother-in-law of objector Balwant Singh, thus, they all were well acquainted with the matter of dispute. All the Arbitrators met together, they inspected the site and discussed the matter. After giving an opportunity of hearing, passed the Award and intimated on the same day. It was urged that merely passing the award on the same day after hearing the parties is not any type of misconduct in the proceeding. It was also contended that taking the statements of the witnesses were not found necessary and none party desired to produce oral evidence. It was submitted that the objector with his signature placed Ex.2 before the Arbitrators and he has not denied his signature thereon in his court statement. The learned court, after taking into consideration all the material rightly

held that there was no misconduct on the part of the Arbitrators but the learned court-below, on the other hand, held that the Award is not clear and passed in a hasty manner, thus, refused to make the rule of the court. This finding is totally against the facts of the case. It was further submitted that no reason has been assigned in the judgment and order that how the award was not clear. The finding in this respect is not tenable. It was contended that there was no issue in this respect. It was urged that the jurisdiction to consider objections was of limited nature. Thus, it was prayed that objection may be rejected and the Award Ex.8 be made rule of the court. The appeal may be allowed.

On the contrary, the learned counsel for the respondent Balwant Singh supported the judgment and order and submitted that the learned court-below has realized that the proper opportunity of hearing was not afforded to the objector and award has been passed in a hasty manner. The Award is having cuttings in many places and the respondent was conveyed the decision at a

late stage. The respondent was not intimated earlier. Thus Court has rightly refused to make the rule of the court. No interference is required. The appeal may be disallowed.

I have considered the rival contentions of the parties and have perused the finding on the issue and conclusion drawn thereon. First it will be proper to examine the evidence led by both the parties.

On behalf of the objector NAW 1 Balwant Singh himself has appeared. He has stated that after the death of father to distribute the properties, the arbitration proceedings were made. He further stated that he gave the list of properties to the Arbitrators. He also stated that the Arbitrators did not take him in arbitration proceedings. He was intimated about the award on 20.3.82. In cross-examination, he has admitted that all the three Arbitrators are his relatives. Shri Kiran Mal is his brother-in-law. He further stated that on Ex.2, A to B is his signature but he made it on the blank paper at the instance of Dungar Singh. He has denied his writing on Ex.3, 4 and 5. He

admitted the signature of his father on Ex.6 but stated that A to B portion has been added later on. No other witness was produced by the objector. On the other hand, AW 1 Dungar singh has stated that Balwant Singh is his brother. For the purpose of distribution of the properties, the Arbitrators were appointed vide Ex.7. The Arbitrators gave their Award Ex.8. He further stated that he and his brother both appeared before the Arbitrators and submitted their claims containing the particulars of immovable and movable properties. The lists Ex.3, 4 and 5 were submitted by Balawant Singh. He has also stated that the Arbitrators heard them and after that they passed the Award on the same day and intimated the parties. In cross-examination, he has stated that all the three Arbitrators met at the house of Shri Kiran Mal and discussed the matter. He has denied this fact that the Award Ex.8 was not passed on that day and passed later on.

AW 2 Fateh Lal, one of the Arbitrators has stated that to settle the dispute between Dungar Singh and Balwant Singh with regard to properties, three

Arbitrators viz. (1) Shri Fateh Lal, (2) Shri Kiran Mal and (3) Sensh Mal were appointed. Thereafter they met with the parties. Both the parties submitted list of properties to them. They gave opportunity of hearing to the parties. They sat in the house of Shri Kiran Mal and decided the dispute in one day. He has denied the facts that they gave award without hearing Balwant Singh and passed in a hasty manner.

Upon perusal of the aforesaid evidence, it is not believable that the Objector was not given proper opportunity to place the documents before the Arbitrators and was not afforded an opportunity to submit his claim. As per Ex.7, by mutual consent, the Arbitrators were appointed and assessed the work of distribution of the properties. For that purpose, they have submitted a list of properties along with other documents. NAW 1 Balwant Singh admitted his signature on Ex.2. The Arbitrators are their close relatives. One of the Arbitrators Shri Kiran Mal is the brother-in-law of Balwant Singh. AW 2 Fateh Lal one of the Arbitrators has stated that the parties were heard and

after considering the material, the award was passed. The contention of the objector that he was not given proper opportunity, is not tenable. The learned court-below has rightly held that misconduct is not proved by the material placed by the objector. The learned court-below has taken the view that the award was passed on the same day in one sitting and the award was not clear and not free from other ambiguities but the learned court-below has not found any misconduct on these counts. Therefore, the finding of the learned court-below in refusing the award to be made rule of the court, is not sustainable. Merely passing the Award on the same day would not itself raise any doubts or ambiguity. The conclusion of the learned court-below is erroneous. There was no other issue in this respect and the issue with regard to misconduct has been decided against the objector, therefore, the award was required to be made rule of the court but the court has refused to do so illegally.

In view of the aforesaid discussion, the objection filed by Balwant Singh is liable to be dismissed

and the Award Ex.8 deserves to be made rule of the court and hereby directed to make rule of the court.

I have thoroughly seen the Award. The Award has been given unanimously by the Arbitrators. Nothing sort of misconduct was found on the part of the Arbitrators and in the arbitration proceedings. The Award Ex.8 is virtually based on the material supplied by the parties and after due deliberation and discussion, the Arbitrators have given the Award. It is also pertinent to note that Ex.2 supplied by Balwant Singh is having his signature. Other material were also proved to be supplied by the parties. Ex.6 is the document pertaining to the signature of the father of both the parties and the signature has been admitted. The Arbitrators have taken aid of that document also. Thus, as per Award Ex.8, the distribution with regard to the property is to be maintained. In the Award Ex.8, the distribution has been made in the following terms;-

“ बाचेजी/ बगेची की सेहरी में स्थित मकान पोल में दाए हाथ की ओर जो एक मकान हैं जिसको पोपट वाला मकान कहते हैं को छोड़कर बाकी के सभी

मकान श्री इंगरसिंह जी बाबेल के रहेगे।

2- इंगरसिंह जी को पुरे मकानों का इस प्रकार लाभ मिलने से मेहता जी की बाडी में स्थित प्लोट 80X 90 का हैं वह एवम् बाचे जी की सेहरी में स्थित मकान पोपट वाला मकान एवं प्लोट श्री बलवन्त सिंह जी के रहेगा।

3- खेती की समस्त जमीन श्री इंगरसिंह जी के रहेगी और 9000 नो हजार रूपया श्री इंगरसिंह जी बलवन्तसिंह जी को देवेंगे।

4- जेवर बैंक से प्राप्त फहरिस्त के अनुसार जो हैं उसमें से बाजे श्री इंगरसिंह जी के रहेगा और काकणिया (कंगन) श्री बलवन्तसिंह जी के रहेगे और बाकी के सोने एवं चांदी के जेवर को आधा -2 दोनों को मिलेगा।

(नोट - 4 तोला सोना श्री इंगरसिंह को अधिक का प्रावधान रखा गया हैं)

5- दुकान की पूंजी श्री जीतमल जी एवं धर्मपत्नी का जो स्टेटमेंट 13.6.73 तक 4281= 37 = 24668= 13 चौबीस हजार छः सौ अड़सठ रुपये की हैं। इसमें से दोनों को आधा- 2 हिस्सा पूंजी के अनुसार श्री इंगरसिंह जी - बलवन्तसिंह जी को 12334/- बारह हजार तीन सौ चौतीस रूपया देंगे।

6- शेयर सर्टीफिकेट जो श्री जीतमल जी बाबेल के नाम के हैं। उसके बराबर हिस्से दोनों को मिलेंगे।

7- बर्तन की जो सूची हैं उसको आधा- 2 बराबर दोनों

को मिलेंगे। उपरोक्त निर्णय के अलावा बंटसारे हेतु एक दूसरे की जो मांग हैं उसको यथास्थिति जिसके पास जो हैं वह कायम रखी जाती हैं। एवं सभी अन्य बातों की मांग को समाप्त समझे जाने का निर्णय लिया जाता है। अर्थात् कोई एक दूसरे से किसी का लेना-देना नहीं रहेगा।"

Thus, the Award deserves to be made rule of the Court and that is hereby declared as rule of the court.

Thus, the appeal is allowed. The judgment and order passed by the learned District Judge, Udaipur is quashed and set aside, by which, the Award dated 23.11.81 has been refused to make rule of the court. Further the Award Ex.8 dated 23.11.81 is made rule of the court. After submitting requisite court-fee, the Award be made rule of the court.

(MANAK MOHTA), J.

